

17-1-5: ENCROACHMENTS:

F. Sidewalk Restaurant Permit: The city manager is authorized to issue a sidewalk restaurant encroachment permit as set out below:

1. Definitions: The following words and phrases shall have the meanings respectively ascribed to them when used in this section:

FOOD SERVICE ESTABLISHMENT: Any public place which is kept, used, maintained, advertised, and held out to the public as a place where meals are sold and served and where meals are actually and regularly served to the public. A food service establishment shall have seating available for patrons as well as adequate and sanitary kitchen and dining room equipment. A food service establishment must have employed therein a sufficient number and kinds of employees to prepare, cook, and serve full meals for its guests. Food service establishments must keep a record of all food items sold such that a determination that the restaurant is serving meals regularly can be made. Food service establishments serving alcohol shall also meet requirements of title 2 of this code applicable to such licensee.

OUTDOOR RESTAURANT: Use of a public sidewalk or plaza area by a food service establishment, for the serving of food and beverages to seated customers.

PERMIT AREA: The sidewalk area designated on the permit specifying the area of operation of the outdoor restaurant.

PERMITTEE: The person or entity operating a food service establishment who has received a permit allowing for the operation of an outdoor restaurant.

2. Permits Required:

a. It shall be unlawful for any person to operate an outdoor restaurant on a public sidewalk without a sidewalk restaurant encroachment permit.

b. The sidewalk restaurant encroachment permit shall allow a food service establishment located in the primary business district (BPR) of the city to operate an outdoor restaurant subject to the requirements of this section.

c. Any permit issued pursuant to this section may contain such written conditions as the city manager, or his designee, deems warranted to protect the use of adjacent right of way for its intended purpose or to prevent congestion of vehicular or pedestrian traffic flow and to otherwise carry out the purpose and intent of this section and this code.

d. The permit holder shall, as part of the right granted pursuant to the permit, be entitled to remove or exclude persons from the permit area during hours of business operation. Such permittee is authorized to give notice to any such person to prevent such entry.

e. The sidewalk restaurant encroachment permit shall expire annually on December 31 of each year. There is an annual permit filing fee of one hundred dollars (\$100.00).

f. Any sidewalk restaurant encroachment permit shall be subject to suspension or revocation as hereafter provided.

3. Application: Application for a sidewalk restaurant encroachment permit shall be made on forms supplied by the city, and submitted to the city manager or his designee, together with the annual fee and shall at minimum include the following:

- a. The name, address, and telephone number of the owner of the property and the food service establishment related to the permit.
- b. A copy of a valid license issued by the Jackson County health department.
- c. A scaled drawing or sketch depicting the dimensions of the proposed permit area and which shows the location and type of tables, chairs, trash receptacles and other equipment proposed to be used, location of ingress and egress, the city owned equipment facilities in or adjacent to the area proposed which are visible to the eye, including, but not limited to, parking meters, trees, manhole covers and utility poles or openings.
- d. An operations plan specifying the proposed dates, days and hours of operation of the outdoor restaurant, the hours of operation of the adjacent restaurant, scheduled maintenance of the permit area, maximum seating capacity, and method of providing security and maintenance.
- e. An executed waiver of liability in a form approved by the city attorney.
- f. Any other information related to the requirements of this chapter that the city manager may require.
- g. All persons, prior to receiving a permit, shall procure and maintain for the duration of the permit, public liability and property damage insurance pertaining to the permit area in a minimum amount of one million dollars (\$1,000,000.00) per person and one million dollars (\$1,000,000.00) in the aggregate per occurrence and property damage in a minimum amount of one million dollars (\$1,000,000.00), naming the city, its officers and employees as additional insured, and the same shall provide that policy shall not terminate or be canceled prior to the expiration date without thirty (30) days' advance written notice to the city. Proof of such insurance issued by an insurance company licensed to do business in the state of Illinois in the form of a certificate of insurance shall be attached to the application.

4. Application Review:

- a. No permit shall be granted, pursuant to this section, unless the finance director or his designee shall certify that there are no outstanding fines, fees, taxes, or other charges due and owed to the city by the owners of the real property on which the restaurant is located or the applicant.
- b. All applications for sidewalk restaurant encroachment permits shall be reviewed by the city to determine compliance with each of the requirements of this section.
- c. No permit shall be issued unless the applicant supplies all information required on or by the application form and is in compliance with the regulations contained in this section.
- d. The applicant shall be notified of the status of the application and its approval or the reason for its denial within ten (10) business days of filing the application.

5. Regulations:

- a. An outdoor restaurant is permitted only on sidewalks or approved plaza areas. The permit area shall be immediately adjacent to the food service establishment requesting the permit, or a sidewalk contiguous to the sidewalk adjacent to the food service establishment.
- b. No permit will be granted if seats or equipment in the outdoor restaurant result in the need for additional restrooms unless such additional restrooms are provided.

c. The hours when service is permitted at the outdoor restaurant shall be between six o'clock (6:00) A.M. and eleven fifty nine o'clock (11:59) P.M.

d. Any person making use of an outdoor restaurant shall do so in a reasonable manner with due regard for the health and safety of persons and property. No permittee shall make any physical alteration to public property. A permittee shall owe a duty to the city of Carbondale and third persons to maintain the permit area in a clean, safe and sanitary condition.

e. The permittee shall keep the permit area free of litter, cans, bottles, and spills at all times. The permittee shall promptly collect and dispose of all litter, trash and other waste materials associated with the outdoor restaurant, including materials in the adjacent public right of way or property originating from the outdoor restaurant. The permittee shall dispose of any such waste in their own trash receptacles only. The permittee shall not dispose of any such waste in public trash receptacles.

f. Upon the expiration or other termination of an outdoor restaurant use permit, the permittee shall immediately remove all tables, chairs, furnishings, equipment and other items of personal property from the permit areas. Any such items remaining upon the public right of way after a reasonable opportunity to remove the same may be removed and disposed of by the city of Carbondale at the sole cost and expense of the permittee.

g. A sidewalk restaurant encroachment permit allows for the temporary placement of tables, chairs, furnishings, equipment, and other items of personal property related to the restaurant. Except for plaza areas, all tables and chairs must be "portable", meaning that no such furniture shall be chained together or bolted together as a unit or affixed to the outdoor wall or ground surface.

h. Umbrellas shall have a maximum diameter of eight feet (8') and a minimum clearance of seven feet (7') above the ground, a weighted base, and be fabric covered. All umbrellas must be made of cloth fabric; vinyl umbrellas are prohibited. Umbrella materials may not have a shiny, synthetic appearance. Signage on umbrellas is prohibited. No lettering, advertising, graphics, and/or logos are allowed on the umbrella face.

i. No signs, banners or other like advertising shall be located in the permit area, unless in accordance with section 15.6.5 of this code, and the restaurant may post a menu detailing food, beverages, or special items.

j. Tables, chairs and umbrellas shall be located so that there remains open, at all times, a longitudinal walking space, the location of which shall be determined by the city, of a minimum of four feet (4') in width, with slopes not to exceed Americans with disabilities act (ADA) requirements.

k. The city manager or his designee may promulgate administrative rules, substantially related to the requirements contained in this section. Such rules shall be attached to the permit and be followed by the permittee.

6. Suspension Or Revocation: The use of a public sidewalk as a sidewalk restaurant shall be subject to temporary suspension or termination at any time by the city in the interest of the public health, safety, welfare and for community events. To the extent that a permit area is needed by the city for the purposes for which it was dedicated, or any other public purpose, the city may immediately suspend or terminate the sidewalk restaurant permit by sending written notice to the permittee and assume full possession and control

of the permit area. The permittee shall remove all furniture from the right of way within the time specified by the notice. If the furniture is not removed by the permittee, the city shall be authorized to remove all furniture and other objects of the permittee from the permit area. If such furniture is not reclaimed by the permittee within seven (7) days after removal by the city, the property shall be presumed abandoned and subject to disposal according to law.

7. Public Property: The provisions of this section shall apply only to the locating of outdoor restaurants on public property or public right of way and shall not apply to any private property.

8. Indemnification; Payments For Cleaning Or Damages:

a. As an express condition of the issuance of the permit, each permittee shall agree in writing to indemnify and hold harmless the city against all claims of liability, loss, injury, death, or damage whatsoever in connection with or arising out of the use of the outdoor restaurant by anyone.

b. As an express condition of the issuance of the permit, the permittee shall agree to, within ten (10) days after the billing date, pay to the city all costs associated with damage to the pavement or other city owned facilities located in or adjacent to the permit area caused by operation of the food service establishment, or costs to clean or remove trash from the permit area or adjacent premises occasioned by the failure of the permittee to clean or remove such trash.